REMARKS – General

Specification:

The specification was objected to because reference designator "202" on page 11, line 23 should be – 201 –. The specification has been amended accordingly. Support for the amendment is found in FIG. 12 as originally filed.

Double Patenting:

The Office Action (OA) rejects claims 1-12 under the judicially created doctrine of obviousness "so as to prevent the unjustified or improper timewise extension of the 'right to exclude' granted by a patent and to prevent possible harassment by multiple assignees." Specifically, the OA states that claims 1-12 are rejected under this doctrine over US Pat. No. 6,509,659. The OA states that the claims are not identical, but the claimed limitations, including a universal base and interface device, are transparently found in the '659 patent.

Applicant notes that the present application is commonly assigned with the '659 patent, and was at the time the invention was made. Thus, a terminal disclaimer could in fact be filed under 37 CFR 3.73(b).

However, in this case, the present application is the senior application, in that it was filed on September 24, 2001. The '659 patent was not filed until October 24, 2001. As such, Applicant can not extend the time of the '659 patent with the present application. Applicant therefore traverses this rejection.

Applicant notes that according to MPEP §804, when the patent used as the basis for a non-statutory, judicially created double patenting rejection is the latter filed application, as is the case here, a two-way obviousness test is triggered. This test is triggered where the Applicant can show that the two inventions could not be filed in a single application, and where the delay is administrative. Under the two-way obviousness test, the Graham factors of obviousness must be applied to both the patent in light of the pending application and vice versa. "An obvious-type double patenting rejection is appropriate only where each analysis compels a conclusion that the invention defined in the claims in issue is an obvious variation of the invention defined in a claim in the other

application/patent. If either analysis does not compel a conclusion of obviousness, no double patenting rejection of the obvious-type is made..." *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968).

Here, Applicant respectfully submits that the claimed subject matter could not have been filed in a single application, and that the delay associated with the present application was administrative. Applicant further submits that the application at issue is not obvious over the patent.

Inventions could not have been filed in a single application

Applicant begins by respectfully submitting that the two applications could not have been filed in the same application because the invention of the '629 patent was conceived at a different time that the present application, by a different inventor. As such, a single application would not have been possible.

Delay was administrative

Regarding the delay, Applicants respectfully submit that the delay in prosecuting the present application was administrative. Applicants note that this is not a complaint, as Applicant is all to aware of the hard working, overburdened Examiner in the patent office. However, as a point of record Applicant notes that a first office action was mailed nearly 3 years after filing, while in the '659 patent application, an office action was mailed less than 12 months after filing. Applicant respectfully submits that this was due in no fault of Applicant, and thus the delay was administrative. As MPEP §804 states, "Where, through no fault of the applicant, the claims in a later filed application issue first, an obvious-type double patenting rejection is improper, in the absence of a two-way obviousness determination, because the applicant does not have complete control over the rate of progress of a patent application through the Office." *In re Braat*, 937 F.2d 589, 19 USPQ2d 1289 (Fed. Cir. 1991).

Present Application not obvious in view of patent

Applicant respectfully submits that the present application recites, e.g. in claim 1, element b, a capacitor that is used for identification, wherein the capacitor has a value that corresponds to an electrical device. Applicant respectfully submits that such a capacitor with a predetermined value is not taught by the '659 patent.

Conclusion

As the two-way test for obviousness fails in that the present application is not taught nor suggested by the '659 patent, Applicant respectfully submits that the non-statutory double patenting rejection is rebutted per MPEP §804. Applicant respectfully requests reconsideration in light of these comments.

Claim Objections:

Claim 1 is objected to because the words "the control circuit" are listed twice. Applicant has corrected this inadvertent error by amendment.

Rejections under 35 USC §103:

The OA rejects claims 1 and 8-12 under §103 as being unpatentable over Miller et al., US Pat. No. 5,818,197, hereinafter "Miller", over Patino et al., US Pat. No. 5,184,059, hereinafter "Patino". Specifically, the OA submits that Miller teaches an intelligent base system for coupling to and identifying an electronic device. The OA submits that Patino teaches a family of radio types having an interface with a capacitor so that the control circuit may identify the battery.

As noted in the "Allowable Subject Matter" section below, claim 1 has been amended to be in condition for allowance. Claims 9 and 10 have been canceled by amendment. Claims 11 and 12 have been amended, and will be addressed here.

With respect to claim 11, Applicant has amended the claim to recite "...a switch capable of applying a step function voltage across the identification capacitor...". Support for this amendment is found in element 216 of FIG. 12. Applicant respectfully submits that the combination of Patino and Miller fails to teach such a switch.

While not arguing against references individually, Applicant notes that the identification mechanism set forth in the combination by the OA is taught in Patino. As such, Applicant submits that the identification system in Patino is a capacitor in parallel with resistor R18. When the battery is inserted, the capacitor (C72) has a reference voltage across it. Resistor R18 then loads the capacitor, causing the voltage to slowly change to a steady state value. Patino senses this change by waiting for the voltage to stabilize. *Patino*, col. 3, lines 41-62.

The present invention, by contrast, includes a switch (element 218) to apply a step voltage across a serial capacitor and resistor to ground. Such a switch is necessary to trigger the exponential decay timer. Such a switch is not taught in either Patino nor Miller. As such, Applicant respectfully submits that claim 11 is now patentable over the combination. Applicant respectfully requests reconsideration in light of the amendment and these comments.

Applicant has amended claim 12 in like fashion. Applicant respectfully requests reconsideration of that claim per the comments above and the amendment.

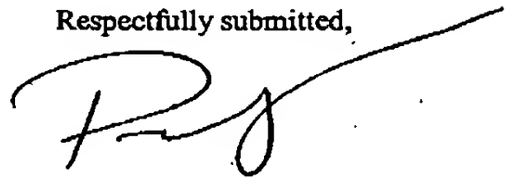
Allowable Subject Matter:

Applicant kindly thanks the Examiner for noting that claims 2-7 would be allowable if rewritten in independent form, incorporating all the limitations of the preceding claims. Applicant has amended claim 1 to include the limitations of claim 2. Applicant has correspondingly amended claim 3 to depend from claim 1, as claim 2 has been canceled. Support for the amendment is found in claim 2 as originally filed. Applicant respectfully submits that these amendments put claims 1, 3-8 in condition for allowance, as claim 1 is now equivalent to original claim 2, and claims 3-8 each depend from the amended claim 1.

CONCLUSION

For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

Respectfully submitted,



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